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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/572,715	03/02/2007	Kai Havukainen	NKO.063.WUS	3402

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EXAMINER	
JONES, MARCUS D	

ART UNIT	PAPER NUMBER
3714	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/572,715	HAVUKAINEN, KAI	
	Examiner	Art Unit	
	Marcus D. Jones	3714	

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *12 November 2008*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-11,13-18 and 20-23* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-11,13-18 and 20-23* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

The amendment filed on 12 November 2008 in response to the previous Non-Final Office Action (12 May 2008) is acknowledged and has been entered.

Claims 1-11, 13-18 and 21-23 are currently pending. Claims 12 and 19 are cancelled.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-11, 13-18, 20 and 21 are rejected under 35 U.S.C. 102(e) as being anticipated by Wells et al. (US PGPub 2007/0155494).

In reference to claims 1 and 11, Wells discloses: A method comprising: receiving context data as a music signal (pg 9, par 122, *MPG transmits audio signals to the game unit*), analyzing the music signal (pg 12, par 160, *analyze the sound*), generating electronic game control data on the basis of the analysis of the music signal, and executing the game according to the generated control data (pg 18, par 236, *MPG modifies the look and feel of the gaming environment to reflect the music-powered attributes*).

In reference to claim 2, Wells discloses: wherein analyzing the music signal includes analyzing tempo of music (pg 15, par 199, *if the tempo is fast-paced, then the motion of the character may be quicker*).

In reference to claims 3 and 4, Wells discloses: receiving context data further comprising processing of context data and wherein said processing of context data is performed in response to actual game data (pg 2-3, par 41-42).

In reference to claim 5, Wells discloses: wherein said context data comprise sensor data (pg 12, par 160, *sensing unit*).

In reference to claim 6, Wells discloses: wherein analyzing the music signal includes analyzing musical notes of the music (pg 13, par 163, *MPG analyzes tone, Tone is a property of a musical note*).

In reference to claims 7 and 20, Wells discloses: further comprising receiving context data comprising visual data (pg 13, par 165, *sensing unit observes the user and controls game based on behavior of user*).

In reference to claim 8, Wells discloses: wherein said context data are used to control two or more timing parameters of the electronic game (pg 4, par 56-57, *breaking glass at a certain time and holding up cigarette lighters during the last ten seconds of a song*).

In reference to claims 9 and 10, Wells discloses: wherein said context data are used to control events in said electronic game and wherein said context data are used to control actions in said electronic game (pg 2, par 31).

In reference to claim 13, Wells discloses: Analyzer module comprising: an interface connectable to a data source for receiving context data as a musical signal (pg 9, par 122, *music-powered attributes may be retrieved from a CD, stream of data, digital broadcast data etc.*), an interface connectable to a game execution processor, for outputting game control data and a processing unit for analyzing the received music signal context data (pg 8, par 100).

In reference to claim 14, Wells discloses: wherein said analyzer is incorporated in a synthesizer module (pg 20, par 257, *synchronizing system components*).

In reference to claim 15, Wells discloses: Electronic gaming device comprising: a first processing unit for executing an electronic game (see Figure 2A and pg 7, par 97), an interface for connecting to a data source for context data wherein the context data includes music signals (pg 9, par 122, *music-powered attributes may be retrieved from a CD, stream of data, digital broadcast data etc.*), a second processing unit for analyzing the music signal context data and generating game control data on the basis of said analyzed music signal context data (pg 8, par 105, *server as a* computing device includes a processing unit), said second processing unit being connected to said interface for receiving said music signal context data (pg 5, par 66), said second processing unit further being connected to said first processing unit for transferring generated game control data to said first processing unit (pg 5, par 69, *game content data transmitted from the server to game unit*), and wherein said first processing until is adapted for executing an electronic game according to said received game control data (pg 8, par 100).

In reference to claim 16, Wells discloses: further comprising a storage for storing of context data or game control data (pg 7, par 98, *memory*).

In reference to claim 17, Wells discloses: wherein said connection between said first and second processing units is a two-way connection (pg 8, par 104, *connected to network*).

In reference to claim 18, Wells discloses: further comprising at least one sensor connected to said second processing unit (pg 8, par 104, *sensing unit connected to game unit which is connected to the server*).

In reference to claim 21, Wells discloses: further comprising a limiting device connected to said first processing unit for limiting the execution of said electronic game according to said received game control data (pg 11, par 144, *bind music-powered attributes to object personality data*).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.

3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wells et al. (US PGPub 2007/0155494), and further in view of Nagata et al. (US PGPub 2002/0016203).

In reference to claims 22 and 23, Wells discloses the invention substantially as claimed. Wells does not explicitly discloses a mobile gaming device. Nagata teaches using a portable gaming terminal apparatus in the form of a portable cellular phone (pg 3, par 59).

It would have obvious to a person having ordinary skill in the art at time of the invention to have modified Wells in view of Nagata to make the game system portable.

Response to Arguments

6. Amendment to claim 11 to address improper dependent form is noted. The objection is hereby withdrawn.

7. Applicant's arguments with respect to claims 1, 11, 13, and 15, have been considered but are moot in view of the new ground(s) of rejection.

Applicant asserts that Wells et al. (US PGPub 2007/0155494) is not prior art with respect to present application (*Remarks*, pg 6-7).

The Examiner respectfully disagrees.

The Applicant correctly points out that Wells is a continuation application of a previous application (10/925,778, now US 7,208,669) filed on August 25, 2004. Upon

closer inspection of US 7,208,669, a Provisional application (No. 60/497,453) was filed on August 25, 2003. As noted, the present application 371 filing date is September 24, 2003.

With respect to claims 9 and 10, Applicant asserts that the claims are not included in any of the statements of rejection. The Examiner would like to point out that claims 9 and 10 were addressed on page 3 of the previous Office Action. Their omission from the statement of rejection is a typographical error. The Examiner would like to further note that claims 9 and 10 are currently rejected under new grounds of rejection as discussed above.

Conclusion

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Marcus D. Jones whose telephone number is (571)270-3773. The examiner can normally be reached on M-F 9-5 EST, Alternate Fridays off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John M. Hotaling can be reached on 571-272-4437. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Marcus D. Jones/
Examiner, Art Unit 3714

/John M Hotaling II/
Supervisory Patent Examiner, Art Unit 3714